

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DARRYL KILGORE,

11 Petitioner,

v.

12 UNITED STATES OF AMERICA,

13 Respondent.

CASE NO. C22-1196-JCC

ORDER

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15 This matter comes before the Court on Petitioner's motion for leave to appeal *in forma*
16 *pauperis* (Dkt. No. 9). Having thoroughly considered the motion and the relevant record, the
17 Court finds oral argument unnecessary and hereby DENIES the motion for the reasons explained
18 herein.

19 Under the Federal Rules of Appellate Procedure, a party to a district court action who
20 desires to appeal *in forma pauperis* must file a motion in the district court with an affidavit that:
21 (1) shows in prescribed detail the party's inability to pay or to give security for fees and costs;
22 (2) claims an entitlement to redress; and (3) states the issues that the party intends to present on
23 appeal. Fed. R. App. P. 24(a). In addition, “[a]n appeal may not be taken *in forma pauperis* if the
24 trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “[A]n
25 appeal is not taken in good faith . . . if . . . no issue is presented which is not plainly frivolous.”
26 *Tweedy v. United States*, 276 F.2d 649, 651 (9th Cir. 1960); *see also Neitzke v. Williams*, 490

1 U.S. 319, 325 (1989) (holding that an appeal is frivolous where it lacks an arguable basis in law).

2 Petitioner filed a habeas petition pursuant to 28 U.S.C. § 2255 alleging three grounds for
3 relief. (Dkt. No. 5.) All of which the Court dismissed with prejudice upon a finding that they
4 were patently frivolous. (Dkt. Nos. 6,7.) Neither Petitioner's notice of appeal nor his instant
5 application for leave to appeal *in forma pauperis* identify alleged errors by the Court or address
6 the deficiencies in his petition; rather, they repeat the same grounds for relief as in his original
7 habeas petition. (*Compare* Dkt. Nos. 5, 6 *with* Dkt. No. 8-1, 9.) Thus, Petitioner's appeal is
8 frivolous because it lacks an arguable basis in law. *See Neitzke*, 490 U.S. at 325.

9 Therefore, the Court CERTIFIES that Petitioner's appeal is not taken in good faith and
10 DENIES Petitioner's motion to proceed *in forma pauperis* on appeal. The Court DIRECTS the
11 Clerk to send this order to the Ninth Circuit. The Court further DIRECTS the Clerk to send a
12 copy of this order to Petitioner.

13 DATED this 14th day of November 2022.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE